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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 94M-318  
41743

MAY 5 4 26 PM '94

In re Applications of

) MM Docket No. 94-10✓

The Lutheran Church/  
Missouri Synod

) DIS BY File Nos. BR- 890929VC  
) BRH-890929VB  
)

For Renewal of Licenses of  
Stations KFUD/KFUD-FM  
Clayton, Missouri

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MEMORANDUM OPINION AND ORDER

Issued: May 4, 1994

; Released: May 5, 1994

1. Under consideration are: (a) a Motion to Compel NAACP to Answer Interrogatories, filed on April 22, 1994, by The Lutheran Church-Missouri Synod ("KFUD"); (b) an opposition to (a), filed on April 29, 1994, by the Missouri State Conference of Branches of the NAACP, the St. Louis Branch of the NAACP and the St. Louis County Branch of the NAACP ("NAACP"); (c) a Motion to Compel Production of Documents by NAACP, filed on April 22, 1994, by KFUD; and (d) an opposition to (c), filed on April 29, 1994, by the NAACP.

2. Background. On March 29, 1994, KFUD propounded four interrogatories to the NAACP, and requested the NAACP to produce certain documents. Interrogatories 1 and 2 sought the identities of all persons the NAACP "expects to call to testify as its witness(es)" on Issues 1 and 2. Interrogatories 3 and 4 sought the identity of all documents in the possession, custody and control of the NAACP that relate to those issues, except documents that are a matter of public record in this proceeding. In its request for production of documents, KFUD sought copies of all documents the NAACP identified in its answers to the interrogatories. On April 15, 1994, the NAACP objected to both KFUD's interrogatories and its request for production of documents.

3. In its motion to compel answers, KFUD revised Interrogatories 1 and 2. It now seeks to compel the NAACP to identify all persons (not already identified by KFUD) known by the NAACP to have knowledge or information relevant to Issues 1 and 2, and the general subject matter of their knowledge. KFUD also seeks to compel the production of documents. The NAACP continues to object to both the interrogatories and the request for documents, claiming that KFUD seeks access to the individuals the NAACP may wish to call as rebuttal witnesses "before such time as the NAACP has taken steps to protect those people,"<sup>1</sup> and that the only reason KFUD might want to know their identities "is to empower its [KFUD's] agents to follow behind the NAACP's investigators as they interview these witnesses."<sup>2</sup> With respect to document production, the NAACP claims that "every piece of evidence KFUD wants is privileged," and that "there is no document

<sup>1</sup> Opposition to Motion to Compel NAACP to Answer Interrogatories, filed by the NAACP on April 29, 1994, at page 1.

<sup>2</sup> Id. at page 3.

presently in the NAACP's possession which is not either a lawyer-client communication or attorney work product developed in anticipation of trial."<sup>3</sup> The NAACP also objects to providing KFUD with a schedule of the documents withheld.

4. Interrogatories. KFUD's motion to compel answers will be granted in part; the NAACP's objections to revised Interrogatories 1 and 2 will be overruled in part. Interrogatories 1 and 2, as revised, are far too broad and are not limited to the identities of individuals with personal knowledge of the facts. However, the NAACP will be required to identify (by name and current or last known address and telephone number) all persons known to the NAACP to have direct personal knowledge of relevant facts relating to: (a) any allegation of employment discrimination at Stations KFUD or KFUD-FM on the basis of race or religious belief during the license term, and (b) any allegation that KFUD made misrepresentations to or lacked candor with the Commission in connection with KFUD's EEO program and documents submitted to the Commission in support thereof.<sup>4</sup> Since discovery is designed, inter alia, to find potential witnesses and determine what they know, to avoid surprise, and to expedite the hearing,<sup>5</sup> KFUD is entitled to this information to assist in its trial preparation. If any further information is desired, KFUD may interview and/or depose the individuals identified. If the NAACP knows of no such individuals with direct personal knowledge of relevant facts, its counsel shall so state.

5. Document Production. KFUD's motion to compel the production of documents will be denied at this juncture in light of the NAACP's contention that all such documents are protected by the attorney-client privilege or the work product doctrine. However, the NAACP will be required to comply with Instruction 5 of KFUD's March 29, 1994, Motion for Production of Documents by NAACP, which provides:

5. If production of any Document called for by this request is refused pursuant to a claim of privilege, the Document should be identified by reference to its author, recipient(s) (including any person receiving a copy, regardless of whether that recipient is listed on the Document), date, and subject matter. The basis for the privilege claimed for such Document should be specified with sufficient precision to permit assessment of the applicability of the privilege involved.

In this regard, the NAACP's objection to providing this schedule is overruled. Suffice it to say, all such schedules, to a certain extent, disclose the timing and nature of counsel's communications with his client, and this does not

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<sup>3</sup> Id. at page 4.

<sup>4</sup> The NAACP need not identify individuals who were identified by KFUD in response to the NAACP's interrogatories or to Memorandum Opinion and Order, FCC 94M-311, released May 2, 1994.

<sup>5</sup> Discovery Procedures, 11 FCC 2d 185 (1968).

constitute a sufficient ground to excuse their preparation and exchange.<sup>6</sup> KFUE may file a further motion to compel the production of documents after it has had an opportunity to evaluate the validity of the NAACP's claims.

Accordingly, IT IS ORDERED that the Motion to Compel Production of Documents by NAACP, filed by KFUE on April 22, 1994, IS DENIED.

IT IS FURTHER ORDERED that, with respect to each document for which the NAACP claims a privilege, the NAACP SHALL SUBMIT to the other parties all of the information called for in Instruction 5, quoted above, within ten (10) days of the release of this order, or at such other time as may be mutually agreeable to counsel.

IT IS FURTHER ORDERED that the Motion to Compel NAACP to Answer Interrogatories, filed by KFUE on April 22, 1994, IS GRANTED to the extent indicated above and IS DENIED in all other respects, and answers to the interrogatories SHALL BE MADE within ten (10) days of the release of this order, or at such other time as may be mutually agreeable to counsel.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg  
Administrative Law Judge

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<sup>6</sup> For ease of reference, the NAACP should number each document identified and withheld.